

**[6450-01-P]**

**DEPARTMENT OF ENERGY**

10 CFR Part 900

RIN 1901-AB36

Coordination of Federal Authorizations for Electric Transmission Facilities

**AGENCY:** Office of Electricity Delivery and Energy Reliability, Department of Energy.

**ACTION:** Final rule.

**SUMMARY:** The Department of Energy (DOE) is amending its regulations for the timely coordination of Federal Authorizations for proposed interstate electric transmission facilities pursuant to the Federal Power Act (FPA). The amendments are intended to improve the pre-application procedures and result in more efficient processing of applications.

**DATES:** This final rule will become effective **INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**. This rule contains a collection of information requirement subject to OMB approval under the Paperwork Reduction Act. DOE has submitted the collection to OMB for approval and will provide separate notice in the Federal Register of OMB approval and the OMB control number.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Smith, PhD, U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, Mailstop OE-20, Room 8G-017, 1000 Independence Avenue, SW, Washington, DC 20585; or [oeregs@hq.doe.gov](mailto:oeregs@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

Acronyms and Abbreviations. A number of acronyms and abbreviations are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms, acronyms, and abbreviations are defined as follows:

CEQ Council on Environmental Quality

CFR Code of Federal Regulations

DOE Department of Energy

EIS Environmental Impact Statement

E.O. Executive Order

EPAct Energy Policy Act of 2005

FERC Federal Energy Regulatory Commission

FPA Federal Power Act

FR Federal Register

IIP Integrated Interagency Pre-Application

MOU Memorandum of Understanding

NEPA National Environmental Policy Act

OMB Office of Management and Budget

PM Presidential Memorandum

PMA Federal Power Marketing Administration

RFI Request for Information

RRTT Rapid Response Team for Transmission

RTO Regional Transmission Operators

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### **IV. Approval of the Office of the Secretary**

- I. Background

In this final rule, DOE establishes a simplified Integrated Interagency Pre-application (IIP) process for the siting of electric transmission facilities, as described in Section II. This process is established pursuant to DOE's authority under section 216(h) of the Federal Power Act (16 U.S.C. 791-828c) (FPA), which sets forth provisions relevant to the siting of interstate electric transmission facilities. section 216(h) of the FPA (16 U.S.C. 824p(h)), "Coordination of Federal Authorizations for Transmission Facilities," provides for DOE to coordinate all Federal authorizations and related environmental reviews needed for siting certain interstate electric

transmission projects, including National Environmental Policy Act of 1969 (NEPA) reviews. Specifically, section 216(h)(3) requires the Secretary, to the maximum extent practicable under Federal law, to coordinate the Federal authorization and review process with any Indian tribes, multi-state entities, and state agencies that have their own separate permitting and environmental reviews. Section 216(h)(4)(C) further requires that DOE establish an expeditious pre-application mechanism to allow Project Proponents to confer with Federal agencies involved, and for each such agency to communicate to the proponent any information needs relevant to a prospective application and key issues of concern to the agencies and public.

On February 2, 2016, DOE published a notice of proposed rulemaking (NOPR) to amend its existing procedures to provide for this revised, simplified IIP Process for certain electric transmission facilities (81 FR 5383). Publication of the NOPR began a 60-day public comment period that ended on April 4, 2016. On March 22, 2016, DOE conducted a public workshop to discuss the NOPR, which included a presentation describing the proposed rule and allowed for questions about and comments on the proposed rule by workshop participants. Comments on the proposed rulemaking were received from approximately 12 sources, including electric industry groups, other organizations, and individuals. The NOPR, IIP Public Workshop presentation and transcript, and any comments that DOE received are available on the DOE website at <http://energy.gov/oc/services/electricity-policy-coordination-and-implementation/transmission-planning/improving>.

For additional information on the legal authority for this final rule, as well as the Executive Orders and Presidential Memoranda this rule is intended to implement, please see the proposed

IIP rule (81 FR 5383; Feb. 2, 2016). The proposed rule also contains information on previous rulemaking and information gathering activities that DOE conducted pursuant to its authority under section 216(h) of the FPA, as well as information on the significant interagency coordination activities that preceded this final rule.

## II. Discussion of Final Rule and Response to Comment

DOE has considered and evaluated the comments received during the public comment period and public workshop. In this section, DOE discusses comments received, provides DOE's responses to the comments, and describes any resulting changes to the proposal adopted in this final rule. Several commenters expressed overall support for DOE's efforts to develop an IIP Process, acknowledging the importance of this effort to improving transmission project planning and siting through early engagement, information sharing, and coordination of federal, tribal, state, and other permitting entities. Comments suggested that implementation of this rule should prove beneficial during pre-application process, as well as provide good information and analysis for informing subsequent NEPA reviews. Specific elements of the proposed rulemaking for which many commenters expressed support include: the voluntary nature of the IIP Process for Project Proponents; a proposed process that is coordinated by a single agency; the simplified proposal for a two meeting IIP structure; development of IIP Process deliverables maintained by DOE as a part of an IIP Process Administrative File; and DOE's required use of information technology, which is intended to reduce costs while increasing the likelihood of remote participation in IIP meetings and discussions by all potentially affected federal agency, tribal, and state and/or local agency representatives.

Commenters did express continued concern that while this final rule is a positive move toward realizing transmission line permitting efficiencies, much more is needed to address challenges in siting infrastructure development and coordination of Federal regulatory authorities and related review processes. Commenters urged DOE to take the lead in developing a systemic, legislative overhaul of the Federal environmental review procedures that lead to lengthy permitting times for important transmission infrastructure that, in their view, necessitated this rulemaking. Commenters also contended that the existing authority afforded to DOE to lead transmission permitting efforts under section 216(h) extends to post-application activities, such as NEPA reviews; that this rule should put a mechanism in place for Federal Entities to recover costs associated with participating in a pre-application processes like the IIP Process; and, that this final rule should provide a mechanism for enforcing Federal Entity adherence to post-application Federal permitting timelines. In this rule, DOE implements only section 216(h)(4)(C) of the FPA, which requires DOE establish an expeditious pre-application mechanism for siting transmission line projects. As a result, these comments are outside the scope of this final rule, and DOE does not address these comments in this final rulemaking. All other comments are addressed as appropriate in sections II.A. through II.F.

#### A. General

10 CFR 900.1 states the purpose of the regulations, which is to provide a process for the timely coordination of Federal authorizations for proposed electric transmission facilities pursuant to section 216(h) of the FPA (16 U.S.C. 824p(h)), including the development of an early pre-application process in support of this coordination and the selection of a NEPA lead agency. This final rule provides a framework for DOE to coordinate and facilitate early

cooperation and exchange of environmental information required to site qualified electric transmission facilities. This early cooperation and information sharing promotes understanding of all permitting requirements and information needs to support agency decision making enabling applicants to prepare more robust applications for submission to relevant Federal, Tribal or State/local permitting agencies. Applications prepared through the IIP Process are expected to better inform post-application regulatory review and consultation processes, such as those under NEPA, the Endangered Species Act, and the National Historic Preservation Act.

The activities that comprise the IIP Process in this final rule occur prior to an applicant filing a request for authorization with Federal permitting agencies. The IIP Process is intended for a Project Proponent who has identified potential Study Corridors and/or potential Routes within an established project area for a Qualifying Project. In DOE's experience, the summary-level project and environmental background information and supporting data, including discussion of the Project Proponent stakeholder outreach activities, requested as a part of the Initiation Request as described in §900.4 of this final rule, is typically under development or available at this stage of project development.

Commenters expressed concerns that the IIP Process would be counterproductive or duplicative of the information developed for and provided to Federal Entities in support of an application and subsequent NEPA review. Some commenters pointed to the amount of time needed to prepare the IIP Initiation Meeting Request and asked DOE to explain how this pre-application process supports review activities under NEPA.

Pre-application activities, such as those provided for in this final rule, can be incorporated into a NEPA review process and resultant NEPA document in a variety of ways. For example, Federal Entities should incorporate information gained from any pre-application activities into their public notices initiating NEPA reviews and information about the project. In addition, identification of any issues during the pre-application is expected to inform and be shared in scoping meetings and other public meetings that are part of the NEPA process. Information shared through the IIP Process and documented in the Final IIP Resources Report and IIP Meeting Summaries, as described in §900.4 of this final rule, can be included as part of the background information for developing the proposed action under NEPA, and would also aid in the development of alternatives and be reflected in the alternatives section of the NEPA document, either as part of the alternatives considered but eliminated from further analysis, or as an alternative that is given detailed consideration in the NEPA document.

IIP Process deliverables such as the IIP Final Resources Report or an IIP Meeting Summary, and the information contained therein, as well as the supporting information or data maintained by DOE as a part of the IIP Process Administrative File should be incorporated by the NEPA Lead Agency or a cooperating agency under NEPA in a subsequent NEPA document that supports an application requesting Federal authorizations for transmission lines. The IIP Process Administrative File as defined in § 900.6 of this final rule would contain IIP Process deliverables that could be referenced directly in NEPA documents post-application. DOE agrees with commenters to the NOPR that the Department should work with CEQ to develop guidance for Federal Entities in their implementation of this final rule, specifically focusing on how to use the IIP Process deliverables to inform a post-application environmental review process.



A commenter asked if a prospective applicant, or Project Proponent, would need to submit application(s) to relevant state(s) responsible for siting transmission lines within their boundaries before submitting its request for initiation of the IIP Process to DOE. Under this final rule, a Project Proponent may submit an Initiation Request to DOE before, at the same time as, or after submitting applications for authorizations by relevant states. DOE developed the IIP Process in this final rule to promote flexibility for Project Proponents with regard to timing of filing all applications for siting authorizations necessary for siting a proposed transmission line project. The IIP Process will notify and provide an opportunity for non-Federal agencies (tribal, state, or local governments) to engage in early planning and coordination of separate non-Federal permitting and environmental reviews with that of the Federal permitting agencies.

DOE also received requests during the public comment period and workshop for clarification about the interaction of this final rule with provisions of the Fixing America's Surface Transportation (FAST) Act (Public Law No: 114-94). Passed by Congress in December 2015, the FAST Act contains provisions related to improving environmental review and permitting of infrastructure projects, including but not limited to, transmission infrastructure. For example, Title XLI of the FAST Act creates a new interagency entity – the Federal Permitting Improvement Council – to oversee interagency Federal infrastructure project permitting and review processes, establishes new procedures to standardize interagency consultation and coordination practices, addresses infrastructure project delivery process, and adds tracking of environmental review and permitting milestones. The activities comprising the IIP Process described in this final rule would inform the development of more robust applications for

transmission infrastructure projects that could be considered for and benefit from the environmental review and permitting improvement provisions of Title XLI of the FAST Act.<sup>1</sup>

## B. Applicability

Section 900.2 of the final rule explains when the provisions of part 900 would apply to the coordination of Federal authorizations. The provisions of part 900, which are consistent with DOE's prior regulations and the 2009 MOU (for additional background on the MOU, please refer to the proposed rule (81 FR 5383, Feb. 2, 2016)), will apply to Qualifying Projects, and will also apply to Other Projects at the discretion of the Assistant Secretary of DOE's Office of Electricity Delivery and Energy Reliability (OE-1). Both types of projects must be for transmission facilities used for the transmission of electric energy in interstate commerce, but Qualifying Projects are generally 230 kV or above and cross jurisdictions administered by more than one Federal Entity or MOU Signatory Agency.

Commenters on the NOPR encouraged DOE to apply its coordination of federal authorizations to transmission line project proposals that would be a part of a "bulk electric system," as defined in FERC Order No. 773,<sup>2</sup> to include all facilities operated at or above 100 kV under the definition

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<sup>1</sup>Title XLI of the Fast Act (section 41001(6)(B)(i)) defines the term "covered project" as any activity in the United States that requires authorization or environmental review by a Federal agency involving construction of infrastructure for renewable or conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, or any other sector as determined by a majority vote of the Council that: (1) is subject to NEPA; (2) is likely to require a total investment of more than \$200,000,000; and, (3) does not qualify for abbreviated authorization or environmental review processes under any applicable law. A covered project may also be one that is subject to NEPA and the size and complexity of which, in the opinion of the Federal Permitting Improvement Council, make the project likely to benefit from enhanced oversight and coordination, including a project likely to require: (1) authorization from or environmental review involving more than two Federal agencies; or (2) the preparation of an environmental impact statement under NEPA.

<sup>2</sup>*Revisions to Electric Reliability Organization Definition of Bulk Electric System and Rules of Procedure*, Order No. 773, 141 FERC ¶ 61,236 (December 20, 2012).

of “Other Projects.” DOE clarifies that the definition of “Other Projects” in Section 900.3 of this final rule would include transmission projects defined by FERC as a part of a bulk electric power system assistance.

DOE emphasizes that there will be no coordination role for DOE for Federal authorizations for electric transmission facilities located within the Electric Reliability Council of Texas (ERCOT) interconnection because section 216(k) of the FPA states that section 216 of the FPA shall not apply within the ERCOT area (16 U.S.C. 824p(k)). Section 900.2 also provides that section 216(h) does not apply when an application has been submitted to FERC for issuance of a permit for construction or modification of a transmission facility, or a pre-filing procedure has been initiated, under section 216(b) of the FPA (16 U.S.C. 824p(b)) (transmission lines within a DOE-designated National Interest Electric Transmission Corridor). In those circumstances, DOE has delegated its section 216(h) coordination authority to FERC and, in Order No. 689,<sup>3</sup> FERC adopted regulations setting forth the procedures it will follow in such circumstances.

This part does not apply to transmission lines that cross the U.S. international border, Federal submerged lands, national marine sanctuaries, marine national monuments, or facilities constructed by Federal Power Marketing Administrations (PMAs).<sup>4</sup> Section 216(h) does not affect any requirements of U.S. environmental laws, and in the above mentioned cases, does not waive any requirements to obtain necessary Federal authorizations for electric transmission facilities.

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<sup>3</sup>Department of Energy Delegation Order No. 00-004-00A, § 1.22, issued May 16, 2006.

<sup>4</sup>DOE does not consider applications to the PMAs for transmission interconnections to be Federal authorization requests within the meaning of section 216(h).

### C. Definitions

Section 900.3 defines terms for this part. DOE removed the definition of the term “Stakeholder Outreach Plan” from the list of defined terms as it is not a term that is used in this final rule.

### D. Integrated Interagency Pre-Application (IIP) Process

Section 900.4 provides the procedures and information requirements of the IIP Process. This section sets forth a framework for implementing the IIP Process, provisions for how DOE would fulfill its section 216(h) Lead Coordinating Agency role as defined in § 900.2 of this part, provisions describing expected outcomes of the IIP Initial Meeting and IIP Close-Out Meeting, and provisions describing the nature and purpose of products generated during the IIP Process (e.g., Final IIP Resources Report).

For proponents of Qualifying Projects or Other Projects, participation in the IIP Process is voluntary. A Project Proponent initiates the IIP Process by submitting an Initiation Request as described in § 900.4 of this final rule. A Project Proponent may elect to request initiation of the IIP Process for a Qualifying Project or Other Project as defined in § 900.3. The timing of the Initiation Request is determined by the Project Proponent. A Project Proponent electing to utilize the IIP Process must submit Initial and Close-Out meeting requests to DOE and actively participate in initial and close-out meetings coordinated by DOE to complete the IIP Process. Completion of the IIP Process as proposed in this Final rule is expected to assist the Project Proponent in determining the likelihood that the Project Proponent would efficiently obtain

permits necessary to construct a proposed project in the competitive, regional transmission planning processes.

The Project Proponent would be expected, among other things, to provide the project-related and environmental information required as part of the Initiation Request to DOE. DOE must determine that adequate information has been provided by the Project Proponent consistent with § 900.4 before DOE will initiate its coordination function under this part.<sup>5</sup>

Information requested as part of the Initiation Request in this proposed rule retains many of the requirements contained in § 900.5 “Request for coordination” of the existing section 216(h) regulation (73 FR 54456; September 19 2008), and expands on some of those elements based on RRTT agency experience and information received in response to the August 2013 RFI (78 FR 53436). DOE will also consider electronic access to a checklist and an IIP Process timeline, as suggested by commenters. These elements would make process determinations and IIP Process deliverables more clear. DOE may also consider providing publicly-available resources in a central electronic repository, as currently provided for in § 900.6(b) of the existing regulations.<sup>6</sup>

Comments received on the NOPR also expressed concern that the information requested to satisfy the Initiation Request represents a substantial level of effort and involves preparation time

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<sup>5</sup> The specific information requested as a part of section 216(h) process initiation is listed in the regulatory language in §900.4(a)-(d). DOE will determine that the initiation request is adequate based on the requested list of summary information (that comprises the “Initiation Request”) in part 900.4(a)-(d)

<sup>6</sup>Electronic tools currently exist that may serve as a resource for the information required as a part of the IIP Process. For example, the Regulatory and Permitting Information Desktop (RAPID) Toolkit is an online tool that streamlines siting and permitting transmission lines in the West. The RAPID Toolkit offers a single location for agencies, developers, and industry stakeholders to work together on electric energy transmission regulatory processes by using a wiki environment to collaborate on regulatory processes, permit guidance, regulations, contacts, and other relevant information. The RAPID Toolkit can be accessed at <http://en.openei.org/wiki/RAPID>.

that would be better served by starting NEPA processes (e.g., early scoping) before applications for Federal authorizations are filed with Federal Entities. As indicated previously, NEPA environmental review and process requirements are not triggered until an application for Federal authorization is filed and accepted by the recipient permitting Federal Entity. The IIP Process would occur prior to submission of an application. Use of the IIP Process is voluntary, and DOE expects that a Project Proponent requesting DOE coordination assistance has made the calculation that the request, including active participation and preparation of information constituting an IIP Initiation Request, is in the best interests of the Project Proponent.

Another commenter was critical of the requirements of the Initiation Request related to the Early Identification of Project Issues, suggesting that they are duplicative of public scoping under NEPA. The Project Issues summary-level information would be informed by a Project Proponent's public and stakeholder outreach activities that typically occur during project planning and inform the potential Study Corridors or potential Routes that would be described in the Summary of the Qualifying Project portion of the IIP Process Initiation request. DOE does not expect that a separate public participation plan would be developed for and specific to the IIP Process nor does the Initiation Request as described in §900.4 of this Final rule mandate the development of such a plan. Rather, the final rule requires that a Project Proponent would provide a concise description of how a Project Proponent coordinates Stakeholder interface, communications, and involvement during its own project planning and development efforts to establish potential Study Corridors or potential Routes for a Qualifying Project.

DOE will notify and request participation by all Federal Entities in the IIP Process that have a potential authorization or consultation for a Qualifying Project after DOE has reviewed and determined that an Initiation Request meets the informational requirements of §900.4(a) through (d). All Federal Entities notified by DOE as having a potential authorization or consultation required for the siting of a Qualifying Project will be expected to participate in the Initial Meeting and the Close Out Meeting, unless the notified agency clarifies in writing to DOE within fifteen (15) calendar days of notification that they do not have any involvement or have minimal involvement, along with the supporting rationale used by the notified agency for their non- or minimal involvement.<sup>7</sup> (DOE notes that this notification was required within seven (7) days in the NOPR, but has determined that seven days may not be adequate and so lengthened the time period to 15 days for this final rule.) Several comments on the NOPR suggested that the IIP Process would not be effective in minimizing inefficiencies of multiple agency environmental review and permitting processes if Federal Entities and Non-Federal Entities cannot be required to participate fully in the IIP Process. This final rule is issued pursuant to Section 216(h)(4)(C) of the FPA, which requires DOE establish an expeditious pre-application mechanism for siting transmission line projects. While this provision authorizes DOE to coordinate pre-application activities among agencies involved in an authorization or permit of a proposed transmission line project, it does not authorize DOE to enforce participation by any Federal Entity or non-Federal Entity in the IIP Process. Rather, this final rule strongly encourages and establishes a structure by which DOE expects full and timely participation by Federal Entities and non-Federal Entities through timely notification, and use of electronic

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<sup>7</sup>Provided, however, that a Federal Entity whose permitting authority for the construction or modification of electric transmission facilities is limited to those facilities for which an application is filed under section 216(b) of the Federal Power Act may participate at its sole discretion.

collaboration tools, like the use of teleconferencing and electronic collaborative tools, which are intended to support remote, lower-cost participation as described in this final rule.

DOE will schedule IIP meetings no less than thirty (30) calendar days from each other and only after Federal Entities are given notice of the need for their participation in the IIP Process. The notification described applies to both Initiation and Close-Out of the IIP Process, in response to the Project Proponent's request for such meetings.

The list of Federal Entities notified by DOE following its review of the Initiation Request as having a potential authorization or consultation required for the siting of a Qualified Project may be revised as necessary during the IIP Process based on information provided by the Project Proponent, a Federal Entity, and otherwise publicly-available information. DOE will oversee the IIP Process and coordinate the involvement of the Federal Entities as described below in §900.4. DOE will provide Federal Entities and Non-Federal Entities access to all information received from the Project Proponent as a part of an Initiation Request determined by DOE to meet the information requirements of this part in § 900.4, which will be coordinated through the use of electronic collaborative tools, specifically the Office of Management and Budget's (OMB's) MAX electronic system (<https://max.omb.gov/maxportal>) throughout an IIP Process for a Qualifying Project.

In-person attendance at IIP Process meetings by each Federal Entity will depend on the availability of resources or the authority to recover costs from Project Proponents. Currently, certain Federal Entities may recover costs only after an application has been submitted, and some



Federal entities lack cost recovery authority altogether. Even in instances where cost recovery may be available, each Federal agency will make its own determination regarding its participation and use of resources. Each Federal agency with concerns regarding their level of participation in the IIP Process meetings will provide its rationale to DOE in writing when or if a determination is made that it may not be an expeditious use of staff time and funds to attend all or some meetings. To the extent allowed by law, Federal Entities may seek cost recovery from the Project Proponents during the IIP Process. DOE will provide an opportunity for Federal and Non-Federal Entities to participate in IIP meetings by using teleconferencing and webinars.

Coordinating the preparation of the Final IIP Resources Report document prepared by DOE and related administrative file will facilitate more efficient preparation of a single environmental review document that all agencies should strive to utilize to inform their relevant decision making. The Final IIP Resources Report is purposefully designed in terms of format and substance to be consistent with provisions for early application of NEPA and the consideration of applicant proposals in: 1) Council on Environmental Quality (CEQ) regulations implementing NEPA (40 CFR Parts 1500 through 1508); 2) CEQ guidance related to early consultation or engagement of Federal agencies with prospective applicants; and 3) NEPA's Forty Most Asked Questions (46 FR 18026; March 23, 1981, as amended).<sup>8</sup> For example, the format and substance of the Final IIP Resources Report could be similar to an "early corporate environmental assessment" or typical applicant generated environmental study. CEQ explains that provisions to promote the early application of NEPA, including by encouraging private parties to initiate environmental studies early and encouraging pre-application consultation between private parties

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<sup>8</sup>CEQ, NEPA's Forty Most Asked Questions (46 FR 18026; March 23, 1981, as amended).

and federal agencies “are intended to encourage and enable private and other non-federal entities to build environmental considerations into their own planning processes in a way that facilitates the application of NEPA and avoids delay.”<sup>9</sup> Comments on the NOPR highlight the importance of the Final IIP Resources Report and its use by a NEPA Lead Agency in informing the post-application environmental review process (e.g., informing scoping) and resultant NEPA document (e.g., alternatives development or incorporation by reference). DOE acknowledges this comment, and notes that, as discussed previously in this preamble, DOE will coordinate its guidance efforts with CEQ to best integrate the information contained in the Final IIP Resources Report into post-application environmental review(s).

The Final IIP Resources Report will be included by DOE, along with all other support information, datasets, maps, figures, etc. collected as part of the IIP Process in an IIP Process Administrative File that would be provided to the NEPA Lead Agency to inform their environmental reviews once an application is filed. This information can, and should, also be used by other agencies on related decision making. DOE will maintain the IIP Process Administrative File for the duration of the IIP Process and after the IIP Close out Meeting has been convened.

#### E. Selection of NEPA Lead Agency

Section 900.5 provides a mechanism for the identification and selection of a potential NEPA Lead Agency responsible for meeting Federal environmental review requirements<sup>10</sup> for permitting interstate transmission lines across multiple Federal jurisdictions once applications are

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<sup>9</sup>*Id.*

<sup>10</sup>Each participating Federal Entity is responsible for meeting its own agency-specific requirements.

filed with permitting agencies. This section incorporates the terms and mechanisms provided for identification and determination of NEPA Lead Agency for transmission facilities proposed for siting on majority Federal lands as set forth in the 2009 MOU and in accordance with CEQ's NEPA regulations. DOE provided clarifying changes to the §900.5 provisions of this final rule, including allowing for agencies to notify DOE of the potential lead agency within 30 calendar days. DOE has determined that more time was needed for agencies to consider this designation and notify DOE of the determination.

#### F. IIP Process Administrative File

Section 900.6 defines the contents of a consolidated IIP Process Administrative File intended to document IIP Process-related information. This new section replaces § 900.6 of the existing Section 216(h) regulations (73 FR 54456). This section also describes the process by which this file will be maintained by DOE as Lead section 216(h) Agency in coordination with the Federal Entities for the duration of the IIP Process. DOE will coordinate its guidance efforts with CEQ to appropriately integrate the information contained in the IIP Process Administrative File into post-application environmental review(s) and related agency decision records.

### III. Regulatory Review

#### A. Executive Orders 12866 and 13563

This regulatory action has been determined to be a “significant regulatory action” under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011. (76 FR 3281, Jan. 21, 2011) EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE concludes that this final rule is consistent with these principles. Specifically, this final rule sets forth voluntary procedures for DOE coordination of Federal Authorizations for the siting of interstate electric transmission facilities. Therefore, any additional costs associated with the implementation of the rule will primarily impact Federal implementing agencies. However, as described in section III.C., because the rule seeks to streamline the IIP process, additional costs to Federal Agencies may actually be minimized or costs may be reduced. As discussed below, DOE will attempt to characterize the effect of this regulation on Federal Agencies as part

of its retrospective review efforts. Additionally actions taken by this rule to coordinate information and agency communication before applications for Federal Authorizations are submitted to Federal agencies for review and consideration may help reduce application review and decision-making timelines thereby potentially benefiting applicants as well as the Federal government. Because use of the IIP Process is voluntary, DOE further expects that the Project Proponent requesting assistance has made the calculation that the request was in the best interests of the Project Proponent. The request would also help transmission developers determine the likelihood that they would successfully obtain permits, which is necessary to make their proposed project successful in the competitive, regional transmission planning processes. As part of its semi-annual retrospective review plan or other performance tracking efforts, DOE will periodically: 1) periodically review the efficacy of the IIP process, including an analysis of how the revised process under this rulemaking has: a) improved times to permit approval; b) streamlined overall process performance, and c) impacted costs to the Federal government; 2) share the results with the public; and 3) seek and respond to comments from the public, including applicants and other federal agencies on how the process may be improved.

#### B. National Environmental Policy Act

DOE has determined that promulgation of these regulations fall into a class of actions that does not individually or cumulatively have a significant impact on the human environment as set forth under DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*). Specifically, this rulemaking is covered under the Categorical Exclusion found in the DOE's National Environmental Policy Act regulations at paragraph A6 of appendix A to subpart D, 10 CFR part 1021, which applies to Rulemakings that are strictly procedural.

Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel’s Web site: <http://www.gc.doe.gov>.

DOE has reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule sets forth simplified or revised procedures for DOE coordination of Federal Authorizations for the siting of interstate electric transmission facilities. As a result, the rule directly impacts Federal agencies and not small entities. In those cases where a Project Proponent requests DOE assistance for a project that is not a Qualifying Project, DOE expects that the provisions of this final rule, if adopted, would not affect the substantive interests of such Project Proponents, including any Project Proponents that are small entities. DOE expects actions taken under the provisions to coordinate information and agency communication before applications for Federal

Authorizations are submitted to Federal agencies for review and consideration would help reduce application review and decision-making timelines. Because use of the IIP Process set forth in this final rule is voluntary, DOE further expects that the Project Proponent requesting assistance has made the calculation that the request was in the best interests of the Project Proponent. The request would also help facilitate transmission developers with determining the likelihood that they would successfully obtain permits, which is necessary to make their proposed project successful in the competitive, regional transmission planning processes. On the basis of the foregoing, DOE certifies that this final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

#### D. Paperwork Reduction Act

The proposed rule contains information collection requirements subject to review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* This requirement has been submitted to OMB for approval. Public reporting burden for providing information during the pre-application process is estimated to average twenty-five (25) hours per response. Public reporting burden for requesting DOE assistance in the Federal authorization process is estimated to average one hour per response. Both of these burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. The pre-application burden estimate also includes time necessary to share and discuss information during pre-application meetings.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) generally requires Federal agencies to examine closely the impacts of regulatory actions on tribal, state, and local governments. Subsection 101(5) of title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose upon tribal, state, or local governments an enforceable duty, except a condition of Federal assistance or a duty arising from participating in a voluntary Federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on tribal, state, and local governments, in the aggregate, or to the private sector, other than to the extent such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to tribal, state, or local governments, or to the private sector, of \$100 million or more in any one year (adjusted annually for inflation). 2 U.S.C. 1532(a) and (b). Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and



timely input from elected officers of tribal, state, and local governments. 2 U.S.C. 1534.

This final rule would revise procedures for an Integrated Interagency Pre-application process by which transmission developers, Federal, state, local agencies and tribes may coordinate early either in person or via teleconference/web conference and share information electronically. DOE has determined that the final rule would not result in the expenditure by tribal, state, and local governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

#### F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any final rule that may affect family well-being. The final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

#### G. Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt state law or that have Federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the states and carefully assess the necessity for such actions. DOE has examined

this proposed rule and has determined that it would not preempt state law and would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

#### H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory

action, which is intended to improve the pre-application procedures for certain transmission projects and therefore result in the more efficient processing of applications, would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

*K. Congressional Notification*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**\*\* Pre-publication copy. \*\***

IV. Approval of the Office of the Assistant Secretary

The Secretary of Energy has approved the publication of this final rule.

**List of Subjects in 10 CFR Part 900**

Electric power, Electric utilities, Energy, Reporting and record keeping requirements

Issued in Washington, DC, on **[DATE SIGNED]**

A handwritten signature in cursive script, reading "Patricia Hoffman", is written over a horizontal line.

Patricia Hoffman  
Assistant Secretary  
Office of Electricity Delivery and Energy Reliability

For the reasons stated in the preamble, DOE proposed to revise part 900 of chapter II of title10, Code of Federal Regulations as set forth below:

**PART 900 – COORDINATION OF FEDERAL AUTHORIZATIONS FOR ELECTRIC TRANSMISSION FACILITIES**

Sec.	
900.1	Purpose.
900.2	Applicability.
900.3	Definitions.
900.4	Integrated interagency pre-application (IIP) process.
900.5	Selection of NEPA lead agency.
900.6	IIP Process administrative file.

**Authority:** 16 U.S.C. 824p(h).

**§ 900.1 Purpose.**

This part provides a process for the timely coordination of information needed for Federal Authorizations for proposed electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA)(16 U.S.C. 824p(h)). This part seeks to ensure electric transmission projects are consistent with the nation’s environmental laws, including laws that protect endangered and threatened species, critical habitats and historic properties. This part provides a framework called the Integrated Interagency Pre-Application (IIP) Process by which the U.S. Department of Energy (DOE) cooperates with applicable Federal and Non-Federal Entities for the purpose of early coordination and information sharing for permitting and environmental reviews required under Federal law to site qualified electric transmission facilities prior to submission of required Federal request(s). The IIP Process provides for timely and focused pre-application meetings with key Federal and Non-Federal Entities, as well as for early

identification of potential siting constraints or opportunities, and seeks to promote thorough and consistent Stakeholder outreach or engagement by a Project Proponent during its transmission line planning efforts. The IIP Process occurs before any application or request for authorization is submitted to Federal Entities. This part improves the siting process by facilitating the early submission, compilation, and documentation of information needed for subsequent coordinated environmental review of a Qualifying Project or approved Other Project by Federal Entities under the National Environmental Policy Act (NEPA) following the submission of an application or request for authorization. This part also provides an opportunity for Non-Federal Entities to coordinate their non-Federal permitting and environmental reviews with the reviews of the Federal Entities.

#### **§ 900.2 Applicability.**

- (a) The regulations under this part apply to Qualifying Projects. At the discretion of the Assistant Secretary (OE-1) the provisions of part 900 may also apply to Other Projects.
- (b) *Other Projects.* (1) Persons seeking DOE assistance in the Federal Authorization process for Other Projects must file a request for coordination with the OE-1. The request must contain:
  - (i) The legal name of the requester; its principal place of business; whether the requester is an individual, partnership, corporation, or other entity; citations to the state laws under which the requester is organized or authorized; and the name, title, and mailing address of the person or persons to whom communications concerning the request for coordination are to be addressed;
  - (ii) A concise general description of the proposed Other Project sufficient to explain its scope and purpose;
  - (iii) A list of all potential Federal Entities involved in the proposed Other Project; and

(iv) A list of anticipated Non-Federal Entities involved in the proposed Other Project, including any agency serial or docket numbers for pending applications.

(2) Within thirty (30) calendar days of receiving this request, the OE-1, in consultation with the affected Federal Entities with jurisdiction, will determine if the Other Project should be treated as a Qualifying Project under this part and will notify the Project Proponent of one of the following:

(i) If accepted for processing under this rule, the project will be treated as a Qualifying Project and the Project Proponent must submit an Initiation Request as set forth under § 900.5; or

(ii) If not accepted for processing under this rule, the Project Proponent must follow the standard procedures of Federal Entities that will have jurisdiction over the project.

(c) This part does not apply to Federal Authorizations for electric transmission facilities wholly located within the Electric Reliability Council of Texas interconnection.

(d) This part does not apply to electric transmission facilities in a DOE-designated National Interest Electric Transmission Corridor where a Project Proponent seeks a construction or modification permit from the Federal Energy Regulatory Commission (FERC) under section 216(b) of the Federal Power Act (16 U.S.C. 824p(b)).

(e) This part does not affect any requirements of Federal law. Participation or non-participation in the IIP Process does not waive any requirements to obtain necessary Federal Authorizations for electric transmission facilities. This part shall not alter or diminish any responsibilities of the Federal Entities to consult under applicable law.

(f) This part complements, and does not supplant, the Federal Entities' pre-application procedures for a Federal Authorization. Participation in the IIP Process does not guarantee



issuance of any required Federal Authorization for a proposed Qualifying Project or selection of the Project Proponent's proposed Study Corridors and proposed Routes as a range of reasonable alternatives or the preferred alternative for NEPA purposes.

(g) DOE, in exercising its responsibilities under this part, will communicate regularly with the FERC, electric reliability organizations and electric transmission organizations approved by FERC, other Federal Entities, and Project Proponents. DOE will use information technologies to provide opportunities for Federal Entities to participate remotely.

(h) DOE, in exercising its responsibilities under this part, will to the maximum extent practicable and consistent with Federal law, coordinate the IIP Process with any Non-Federal Entities. DOE will use information technologies to provide opportunities for Non-Federal Entities to participate remotely.

### **§ 900.3 Definitions.**

As used in this part:

Affected Landowner means an owner of real property interests who is usually referenced in the most recent county or city tax records, and whose real property:

- (1) Is located within either 0.25 miles of a proposed Study Corridor or Route of a Qualifying Project or at a minimum distance specified by state law, whichever is greater; or
- (2) Contains a residence within 3000 feet of a proposed construction work area for a Qualifying Project.

DOE means the United States Department of Energy.

Early Identification of Project Issues refers to an early and open Stakeholder participation process carried out by a Project Proponent as a part of its project development activities to identify potential environmental issues Federal and Non-Federal Entities' may consider for

further study, issues of concern to the affected public and Stakeholders, and potential project alternatives.

Federal Authorization means any authorization required under Federal law to site an electric transmission facility, including permits, rights-of-way, special use authorizations, certifications, opinions, or other approvals. This term includes those authorizations that may involve determinations under Federal law by either Federal or Non-Federal Entities.

Federal Entity means any Federal agency with jurisdictional interests that may have an effect on a proposed Qualifying Project, that is responsible for issuing a Federal Authorization for the proposed Qualifying Project or attendant facilities, has relevant expertise with respect to environmental and other issues pertinent to or that are potentially affected by the proposed Qualifying Project or its attendant facilities, or provides funding for the proposed Qualifying Project or its attendant facilities. Federal Entities include those with either permitting or non-permitting authority; for example, those entities with which consultation or review must be completed before a project may commence, such as the Department of Defense for an examination of military test, training or operational impacts.

FPA means the Federal Power Act (16 U.S.C. 791 through 828c).

IIP Process Administrative File means the information assembled and maintained by DOE as the Lead section 216(h) Agency. The IIP Process Administrative File will include the IIP Initiation Request, which includes a Summary of Qualifying Project, Affected Environmental Resources and Impacts Summary, associated Maps, Geospatial Information and Data (provided in electronic format), and a Summary of Early Identification of Project Issues. The IIP Process Administrative File will also include IIP Meeting Summaries, an IIP Resources Report, and other documents, including but not limited to maps, publicly-available data, and other supporting

documentation submitted by the Project Proponent as part of the IIP Process that inform the Federal Entities.

IIP Resources Report means the resource summary information provided by the Project Proponent as a part of the IIP Process that meets the content requirements pursuant to §900.4 of this part. The IIP Resource Report contains the environmental information used by a Project Proponent to plan a Qualifying Project.

Indian tribe has the same meaning as provided for in 25 U.S.C. 450b(e).

Lead 216(h) Agency means the Department of Energy, which section 216(h) of the FPA (16 U.S.C. 824p(h)) makes responsible for timely coordination of Federal Authorization requests for proposed electric transmission facilities.

MOU Signatory Agency means a signatory of the Interagency MOU executed on October 23, 2009, entitled, “Memorandum of Understanding among the United States (U.S.) Department of Agriculture (USDA), the Department of Commerce, Department of Defense (DoD), Department of Energy (DOE), Environmental Protection Agency (EPA), the Council on Environmental Quality (CEQ), the Federal Energy Regulatory Commission (FERC), the Advisory Council on Historic Preservation (ACHP), and Department of the Interior (DOI), regarding Coordination in Federal Agency Review of Electric Transmission Facilities on Federal Lands.”

MOU Principals means the heads of each of the MOU Signatory Agencies.

NEPA means the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)

NEPA Lead Agency means the Federal agency or agencies preparing or having primary responsibility for preparing an environmental impact statement or environmental assessment as defined in 40 CFR 1508.16 and in accordance with 40 CFR 1501.5(c).

Non-Federal Entity means an Indian Tribe, multistate governmental entity, or state and local government agency with relevant expertise and/or jurisdiction within the Project Area, that is responsible for conducting permitting and environmental reviews of the proposed Qualifying Project or its attendant facilities, that has special expertise with respect to environmental and other issues pertinent to or that are potentially affected by the proposed Qualifying Project or its attendant facilities, or provides funding for the proposed Qualifying Project or its attendant facilities. Non-Federal Entities may include those with either permitting or non-permitting authority, e.g., entities such as State Historic Preservation Offices, with whom consultation must be completed in accordance with section 106 of the National Historic Preservation Act, 54 U.S.C. 306108, before a project can commence.

OE-1 means the Assistant Secretary for DOE's Office of Electricity Delivery and Energy Reliability.

Other Projects mean electric transmission facilities that are not Qualifying Projects. Other Projects may include facilities for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale that do not meet the 230 kV or above qualification, or are not otherwise identified as regionally or nationally significant with attendant facilities, in which all or part of a proposed transmission line—

- (1) Crosses jurisdictions administered by more than one Federal Entity; or
- (2) Crosses jurisdictions administered by a Federal entity and is considered for Federal financial assistance from a Federal entity.

Project Area means the geographic area considered when the Project Proponent develops Study Corridors and then potential Routes for environmental review and potential project siting as a part of the Project Proponent's planning process for a Qualifying Project. It is an area

located between the two end points of the project (e.g., substations), including their immediate surroundings within at least one-mile of that area, as well as any proposed intermediate substations. The size of the Project Area should be sufficient to allow for the evaluation of various potential alternative Routes with differing environmental, engineering, and regulatory constraints. The Project Area does not necessarily coincide with “permit area,” “area of potential effect,” “action area,” or other defined terms of art that are specific to types of regulatory review.

Project Proponent means a person or entity who initiates the IIP Process in anticipation of seeking Federal Authorizations for a Qualifying Project or Other Project.

Qualifying Project means—A non-marine high voltage electric transmission line (230 kV or above) and its attendant facilities, or other regionally or nationally significant non-marine electric transmission line and its attendant facilities, in which:

(1) All or part of the proposed electric transmission line is used for the transmission of electric energy in interstate commerce for sale at wholesale, and

(2) All or part of the proposed electric transmission line crosses jurisdictions administered by more than one Federal Entity or crosses jurisdictions administered by a Federal Entity and is considered for Federal financial assistance from a Federal Entity. Qualifying Projects do not include those for which a Project Proponent seeks a construction or modification permit from the FERC for electric transmission facilities in a DOE-designated National Interest Electric Transmission Corridor under section 216(b) of the FPA (16 U.S.C.824p(b)).

Regional Mitigation Approach means an approach that applies the mitigation hierarchy (first seeking to avoid, then minimize impacts, then, when necessary, compensate for residual impacts) when developing mitigation measures for impacts to resources from Qualifying Projects at scales relevant to the resource, however narrow or broad, necessary to sustain, or otherwise achieve

established goals for those resources. The approach identifies the needs and baseline conditions of targeted resources, potential impacts from the Qualifying Projects, cumulative impacts of past and likely projected disturbance to those resources, and future disturbance trends. The approach then uses such information to identify priorities for avoidance, minimization, and compensatory mitigation measures across that relevant area to provide the maximum benefit to the impacted resources.

Regional Mitigation Strategies or Plans mean documents developed through or external to the NEPA process that apply a Regional Mitigation Approach to identify appropriate mitigation measures in advance of potential impacts to resources from Qualifying Projects.

Route means a linear area within which a Qualifying Project could be sited. It should be wide enough to allow minor adjustments in the alignment of the Qualifying Project so as to avoid sensitive features or to accommodate potential engineering constraints but narrow enough to allow detailed study.

Stakeholder means any Non-Federal Entity, any non-governmental organization, Affected Landowner, or other person potentially affected by a proposed Qualifying Project.

Study Corridor means a contiguous area (but not to exceed one-mile) in width within the Project Area where alternative Routes may be considered for further study.

#### **§ 900.4 Integrated Interagency Pre-application (IIP) process**

(a) The IIP Process is intended for a Project Proponent who has identified potential Study Corridors and/or potential Routes within an established Project Area and the proposed locations of any intermediate substations for a Qualifying Project. The IIP Process is also intended to accommodate Qualifying Projects that have been selected in a regional electric transmission plan for purposes of cost allocation or a similar process where an electric transmission plan has been

identified and the permitting and siting phase must commence. While the IIP Process is optional, the early coordination provided by DOE between Federal Entities, Non-Federal Entities, and the Project Proponent ensures that the Project Proponent fully understands application and permitting requirements, including data potentially necessary to satisfy application requirements for all permitting entities. The two-meeting structure of the IIP process also allows for early interaction between the Project Proponents, Federal Entities, and Non-Federal Entities in order to enhance early understanding by those having an authorization or consultation related to the Qualifying Project. The IIP process is expected to provide Federal Entities and Non-Federal Entities with a clear description of a Qualifying Project, the Project Proponent's siting process, and the environmental and community setting being considered by the Project Proponent for siting the transmission line, as well as facilitate the Early Identification of Project Issues.

(b) A Project Proponent electing to utilize the IIP Process must submit an Initiation Request to DOE to start the IIP Process. The timing of the submission of the Initiation Request for IIP Process is determined by the Project Proponent. The Initiation Request must include, based on best available information, a Summary of Qualifying Project, Affected Environmental Resources and Impacts Summary, associated Maps, Geospatial Information, and Studies (provided in electronic format), and a Summary of Early Identification of Project Issues. The Initiation Request must adhere to the page limits established by this part.

(c) Summary of the Qualifying Project is limited to a maximum length of ten (10) pages, single-spaced and must include:

- (1) A statement that the Project Proponent requests to use the IIP Process;

- (2) Primary contact information for the Project Proponent, including a primary e-mail address;
- (3) The legal information for the Project Proponent: legal name; principal place of business; whether the requester is an individual, partnership, corporation, or other entity; the state laws under which the requester is organized or authorized; and if the Project Proponent resides or has its principal office outside the United States, documentation related to designation by irrevocable power of attorney of an agent residing within the United States;
- (4) A description of the Project Proponent's financial and technical capability to construct, operate, maintain, and decommission the Qualifying Project;
- (5) A statement of the Project Proponent's interests and objectives;
- (6) To the extent available, regional electric transmission planning documents, including status of regional reliability studies, regional congestion or other related studies where applicable, and interconnection requests;
- (7) A brief description of the evaluation criteria and methods used by the Project Proponent to identify and develop the potential Study Corridors or potential Routes for the proposed Qualifying Project;



- (8) A brief description of the proposed Qualifying Project, including endpoints, voltage, ownership, justification for the line, intermediate substations if applicable, and, to the extent known, any information about constraints or flexibility with respect to the Qualifying Project;
- (9) Project Proponent's proposed schedule, including timeframe for filing necessary Federal and state applications, construction start date, and planned in-service date if the Qualifying Project receives needed Federal Authorizations and approvals by Non-Federal Entities; and
- (10) A list of potentially affected Federal and Non-Federal Entities.

(d) *Affected Environmental Resources and Impacts Summary*. The Affected Environmental Resources and Impacts Summary is limited to a maximum length of twenty (20), single-spaced pages, not including associated maps, and must include concise descriptions, based on existing, relevant, and reasonably-available information, of the known existing environment, and major site conditions in Project Area, including:

- (1) An overview of topographical and resource features that are relevant to the siting of electric transmission lines present;

- (2) Summary of known land uses, including Federal lands, Tribal lands, and state public lands of various types (e.g., parks and monuments), associated land ownership, where appropriate, and any land use restrictions;
- (3) Summary of known or potential adverse effects to cultural and historic resources;
- (4) Summary of known or potential conflicts with or adverse impacts on military activities;
- (5) Summary of known or potential impacts on the U.S. aviation system, including FAA restricted airspace;
- (6) Summary of known or potential impacts on the U.S. marine transportation system, including impacts on waterways under jurisdiction of the U.S. Coast Guard;
- (7) Summary of known information about Federal- and state-protected avian, aquatic, and terrestrial species, and critical habitat or otherwise protected habitat, that may be present, as well as other biological resources information that is necessary for an environmental review;

- (8) Summary of the aquatic habitats (to include estuarine environments, and water bodies, including wetlands, as well as any known river crossings and potential constraints caused by impacts to navigable waters of the United States considered for the Qualifying Project);
- (9) Summary of known information about the presence of low-income communities and minority populations that could be affected by the Qualifying Project;
- (10) Identification of existing or proposed Qualifying Project facilities or operations in the Project Area;
- (11) Summary of the proposed use of previously-disturbed lands, existing, agency-designated corridors, including but not limited to corridors designated under section 503 of the Federal Land Policy and Management Act and section 368 of the Energy Policy Act of 2005, transportation rights-of-way, and the feasibility for co-location of the Qualifying Project with existing facilities or location in existing corridors and transportation rights-of-way; and
- (12) Summary of potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans, and considered by the Project Proponent to reduce the

potential impacts of the proposed Qualifying Project to resources warranting or requiring mitigation.

(e) *Maps, Geospatial Information, and Studies.* Maps, Geospatial Information and Studies in support of the information provided in the summary descriptions for the known existing environmental, cultural, and historic resources in the Project Area under paragraph (b) in this section must be included, and do not contribute to the overall page length of the IIP Initiation Request. Project Proponents must provide maps as electronic data files that may be readily accessed by Federal Entities and Non-Federal Entities, including:

- (1) A map of the Project Area showing the locations of potential Study Corridors or potential Routes;
- (2) Detailed maps that accurately show information supporting summaries of the known existing environmental resources within the potential Study Corridors or potential Routes;
- (3) Electronic access to existing data or studies relevant to the summary information provided as part of paragraphs (a) and (b) of this section; and
- (4) Citations identifying sources, data, and analyses used to develop the IIP Process Initiation Request materials.

(f) *Summary of Early Identification of Project Issues.* The Summary of Early Identification of Project Issues must not exceed ten (10), single-spaced pages in length and is intended to

provide a summary of Stakeholder outreach or interactions conducted for the Qualifying Project prior to submission of the Initiation Request and to inform the development of issues and project alternatives for study in an environmental review document. The Summary of Early Identification of Project Issues must also:

- (1) Discuss the specific tools and actions used by the Project Proponent to facilitate Stakeholder communications and public information, including an existing, current Project Proponent website for the proposed Qualifying Project, where available, and a readily-accessible, easily-identifiable, single point of contact for the Project Proponent;
- (2) Identify how and when meetings on the location of potential Study Corridors or potential Routes have been and would be publicized prior to the submission of applications for Federal Authorization, as well as where and when those meetings were held and how many more meetings may be planned during the IIP Process;
- (3) Identify known Stakeholders and how Stakeholders are identified;
- (4) Briefly explain how the Project Proponent responds to requests for information from Stakeholders, as well as records Stakeholder requests, information received, and Project Proponent responses to Stakeholders;

(5) Provide the type of location (for example, libraries, community reading rooms, or city halls) in each county potentially affected by the proposed Qualifying Project, where the Project Proponent has provided publicly-available copies of documents and materials related to the proposed Qualifying Project;

(6) Describe the evaluation criteria being used by the Project Proponent to identify and develop the potential Study Corridors or potential Routes and that are presented by the Project Proponent to Stakeholders during its project planning outreach efforts prior to submission of applications for Federal Authorizations or non-Federal permits or authorizations;

(7) Provide information collected as a result of the Project Proponent's Stakeholder outreach efforts; and

(8) Include a summary of issues identified, differing project alternative Corridors or Routes, and revisions to Routes developed as a result of issues identified by Stakeholders during the Project Proponent's Stakeholder outreach efforts for the Qualifying Project.

(g) Within fifteen (15) calendar days of receiving the Initiation Request, DOE shall notify by email all Federal Entities and Non-Federal Entities with an authorization potentially necessary to site the Qualifying Project that:

(1) Based on its initial review of information submitted by the Project Proponent in response to requirements in paragraphs (a) and (b) of this section, DOE has identified the contacted Federal Entities or Non-Federal Entities as potentially having an authorization or consultation responsibility or other relevant expertise related to the Qualifying Project;

(2) Federal and Non-Federal Entities notified by DOE should participate in the IIP Process for the Qualifying Project with DOE's rationale for that determination provided; and

(3) Federal and Non-Federal Entities notified by DOE will provide DOE with a name and information for a point of contact, and any initial questions or concerns, including supporting rationale, about their level of participation in the IIP Process based on DOE's justification in writing to DOE within fifteen (15) calendar days of receiving DOE's notification.

(h) Within thirty (30) calendar days of receiving the Initiation Request, DOE shall notify the Project Proponent that:

(1) The Initiation Request meets the requirements in paragraphs (a) through (d) of this section, including whether the project constitutes a Qualifying Project; or

(2) The Initiation Request does not meet the requirements in paragraphs (a) through (d) in this section. DOE will provide the reasons for that finding and a

description of how the Project Proponent may, if applicable, address any deficiencies through supplementation of the information contained in the Initiation Request so that DOE may re-consider its determination.

(i) DOE shall provide Federal and Non-Federal Entities with access to an electronic copy of the Initiation Request and associated maps, geospatial data, and studies that meet the requirements in paragraphs (a) through (d) of this section, at the same time that DOE provides notice to the Project Proponent.

(j) *IIP Initial Meeting.* DOE, in consultation with the identified Federal Entities, shall convene the IIP Initial Meeting with the Project Proponent and all Federal Entities and Non-Federal Entities notified by DOE as having an authorization or consultation related to the Qualifying Project as soon as practicable and no later than forty-five (45) calendar days after notifying the Project Proponent and Federal and Non-Federal Entities that the Initiation Request meets the requirements in paragraphs (a) through (d) of this section. The Initial Meeting shall be convened in the area or region where the proposed Qualifying Project is located. Federal and Non-Federal Entities shall have at least thirty (30) calendar days to review the information provided by the Project Proponent as part of the Initiation Request prior to the meeting. Federal Entities identified by DOE as having a Federal authorization related to the Qualifying Project are expected to participate in the Initial Meeting. DOE also shall invite Non-Federal Entities identified by DOE as having an authorization or consultation related to the Qualifying Project to participate in the Initial Meeting. During the Initial Meeting:



- (1) DOE and the Federal Entities shall discuss the IIP Process and any cost recovery requirements, where applicable, with the Project Proponent;
- (2) The Project Proponent shall describe the proposed Qualifying Project and the contents of its Initiation Request; and
- (3) The Federal Entities shall, to the extent possible and based on agency expertise and experience, review the information provided by the Project Proponent, and publicly-available information, and preliminarily identify the following and other reasonable criteria for adding, deleting, or modifying preliminary Routes from further consideration within the identified Study Corridors, including:
  - (i) Potential environmental, visual, historic, cultural, economic, social, or health effects or harm based on the potential project or proposed siting, and anticipated constraints;
  - (ii) Potential cultural resources and historic properties of concern;
  - (iii) Areas under special protection by Federal statute, or other Federal Entity or Non-Federal Entity decision that could potentially increase the time needed for project evaluation and potentially foreclose approval of siting a transmission line Route through such areas. Such areas may include, but are not limited to, properties or sites which may be of traditional or cultural importance to Indian Tribe(s), National Scenic and Historic Trails, National Landscape Conservation system units managed by the Bureau of Land Management (BLM), National Wildlife Refuges, units of the National Park System, national marine sanctuaries, or marine national monuments;

(iv) Opportunities to site Routes through designated corridors, previously disturbed lands, and lands with existing infrastructure as a means of potentially reducing impacts and known conflicts as well as the time needed for affected Federal land managers to evaluate an application for a Federal Authorization if the Route is sited through such areas (e.g., co-location with existing infrastructure or location on previously disturbed lands or in energy corridors designated by the DOI or USDA under Section 503 of the Federal Land Policy and Management Act or Section 368 of the Energy Policy Act of 2005, an existing right-of-way, or a utility corridor identified in a land management plan);

(A) Potential constraints caused by impacts on military test, training, and operational missions, including impacts on installations, ranges, and airspace;

(B) Potential constraints caused by impacts on the United States' aviation system;

(C) Potential constraints caused by impacts to navigable waters of the United States;

(D) Potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans to reduce the potential impact of the proposed Qualifying Project to resources requiring mitigation; and  
(E) Based on available information provided by the Project Proponent, biological (including threatened, endangered, or otherwise protected avian, aquatic, and terrestrial species and aquatic habitats), visual, cultural, historic, and other surveys and studies that may be required for preliminary proposed Routes.

(v) Such information and feedback to the Project Proponent does not constitute a commitment by Federal Entities to approve or deny any Federal Authorization request.

Moreover, no agency will determine that the Project Proponent's proposed preliminary Routes

presented or discussed during the IIP Process constitute a range of reasonable alternatives for NEPA purposes or that the environmental information provided during the IIP Process would satisfy the entirety of information needs for purposes of compliance with NEPA or other applicable laws and regulations. The IIP Process does not limit agency discretion regarding NEPA review. Participating Non-Federal Entities are encouraged to identify risks and benefits of siting the proposed Qualifying Project within the preliminary proposed Routes.

(vi) DOE shall record key issues, information gaps, and data needs identified by Federal and Non-Federal Entities during the Initial Meeting, and shall convey a summary of the meeting discussions, key issues, and information gaps and requests to the Project Proponent, all Federal Entities, and any Non-Federal Entities that participate in the IIP Process in a draft Initial Meeting Summary within fifteen (15) calendar days after the meeting. Participating Federal Entities and Non-Federal Entities, and the Project Proponent will then have fifteen (15) calendar days following its receipt of the IIP Process Meeting Summary to review the IIP Process Meeting Summary and provide corrections to DOE for resolution in a final Initial Meeting Summary, as appropriate. Thirty (30) calendar days following the close of the 15-day review period, DOE will incorporate the final Initial Meeting Summary into the IIP Process Administrative File for the Qualifying Project, and, at the same time, provide all Federal and Non-Federal Entities and the Project Proponent an electronic copy of a final IIP Initial Meeting Summary.

(k) *IIP Close-Out Meeting Request.* A Project Proponent electing to utilize the IIP Process pursuant to this section must submit a Close-Out Meeting Request to DOE to complete the IIP Process. The timing of the submission of the Close-Out Meeting Request for the IIP Process is

determined by the Project Proponent but may only be submitted no less than forty-five (45) calendar days following the Initial Meeting. The Close-Out Meeting Request shall include:

- (1) A statement that the Project Proponent is requesting the Close-Out Meeting for the IIP Process;
- (2) A summary table of changes made to the Qualifying Project during the IIP Process, including potential environmental and community benefits from improved siting or design;
- (3) Maps of updates to potential proposed Routes within Study Corridors, including the line, substations and other infrastructure, which include at least as much detail as required for the Initial Meeting described above and as modified in response to early Stakeholder input and outreach and agency feedback documented as a part of the IIP Initial Meeting Summary;
- (4) An updated summary of all project-specific biological (including threatened, endangered or otherwise protected avian, aquatic, and terrestrial species, and aquatic habitats), visual, cultural, historic or other surveys sponsored by the Project Proponent;
- (5) If known, a schedule for completing upcoming field resource surveys;

- (6) An updated summary of all known or potential adverse impacts to natural resources;
- (7) An updated summary of any known or potential adverse effects to cultural and historic resources;
- (8) A conceptual plan for potential implementation and monitoring of mitigation measures, including avoidance, minimization, and conservation measures, such as compensatory mitigation (offsite and onsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans to reduce the potential impact of the proposed Qualifying Project to resources warranting or requiring mitigation;
- (9) An estimated time of filing its requests for Federal Authorizations for the proposed Qualifying Project; and
- (10) An estimated time of filing its requests for all other authorizations and consultations with Non-Federal Entities.

(l) *Close-Out Meeting*. The IIP Process Close-Out Meeting shall result in a description by Federal Entities of the remaining issues of concern, identified information gaps or data needs, and potential issues or conflicts that could impact the time it will take affected Federal Entities to process applications for Federal Authorizations for the proposed Qualifying Project. The Non-Federal Entities shall also be encouraged to provide a description of remaining issues of concern,

information needs, and potential issues or conflicts. The IIP Process Close-Out Meeting will also result in the identification of a potential NEPA Lead Agency pursuant to § 900.6 described.

- (1) Within fifteen (15) calendar days of receiving the Close-Out Meeting Request, DOE shall notify by email the appropriate POCs of all Federal Entities and Non-Federal Entities with a known or potential authorization necessary to site the Qualifying Project.
- (2) Within thirty (30) calendar days of receiving a Close-Out Meeting Request, DOE shall determine whether the Close-Out Meeting Request meets the requirements in paragraph (i) of this section and inform the Project Proponent of its acceptance, and provide Federal Entities and Non-Federal Entities with Close-Out Meeting Request materials, including map, geospatial data, and surveys in electronic format, via electronic means.
- (3) Within sixty (60) calendar days of making a determination that the Close-Out Meeting Request meets the requirements of this section, DOE shall convene the Close-Out Meeting in the same region or location as the Initial Meeting with the Project Proponent and all Federal Entities. All Non-Federal Entities participating in the IIP Process shall also be invited to attend. During the Close-Out Meeting:

(i) The Project Proponent's updates to the siting process to date shall be discussed, including Stakeholder Outreach activities, resultant Stakeholder input, and Project Proponent response to Stakeholder input;

(ii) Based on information provided by the Project Proponent to date, the Federal Entities shall discuss key issues of concern and potential mitigation measures identified for the proposed Qualifying Project;

(iii) Led by DOE, all Federal Entities shall discuss statutory and regulatory standards that must be met to make decisions for Federal Authorizations required for the proposed Qualifying Project;

(iv) Led by DOE, all Federal Entities shall describe the process and estimated time to complete for required Federal Authorizations and, where possible, the anticipated cost (e.g., processing and monitoring fees and land use fees);

(v) Led by DOE, all affected Federal Entities shall describe their expectations for a complete application for a Federal Authorization for the proposed Qualifying Project;

(vi) After the close out meeting, DOE shall prepare a Final IIP Resources Report for inclusion in the IIP Process Administrative File. The Final IIP Resources Report provides a description of the proposed Qualifying Project, including Stakeholder Outreach activities and feedback, summary information on environmental resources, and potential impacts (with electronic access to associated maps, geospatial data and/or survey data), potential issues, and identification of constraints by Federal Entities and Non-Federal Entities for the proposed Qualifying Project;

(vii) DOE shall recommend that participating Federal Entities use the Final IIP Resources Report to inform the NEPA process for the proposed Qualifying Project. For example, Federal Entities could use the Final IIP Resources Report during scoping for an EIS and identifying potential Routes, to explain why certain alternatives were eliminated from further consideration, and to preliminarily identify impacts, potential avoidance, minimization, and conservation measures, such as compensatory mitigation (onsite and offsite), developed through the use of a Regional Mitigation Approach or, where available, Regional Mitigation Strategies or Plans and considered by the Project Proponent to reduce the potential impacts of the proposed Qualifying Project to resources requiring mitigation; and

(viii) All participating Federal and Non-Federal Entities shall identify a preliminary schedule for authorizations for the proposed Qualifying Project contingent upon timely filing of applications and related materials by the Project Proponent.

#### **§ 900.5 Selection of the NEPA lead agency**

DOE, in consultation with the Federal Entities, shall coordinate the selection of a potential NEPA Lead Agency responsible for preparing an environmental review document under NEPA for proposed Qualifying Projects. Determination and responsibilities of the NEPA Lead Agency for preparing the EIS shall be in compliance with applicable law, including the National Environmental Policy Act of 1969 and CEQ implementing regulations at 40 CFR part 1500, and each agency's respective NEPA implementing regulations and procedures. However:



(a) For proposed Qualifying Projects that cross lands administered by both DOI and USDA, DOI and USDA shall consult and jointly determine within thirty (30) calendar days of receiving the Initiation Request information from DOE which Department has a greater land management interest in the proposed Qualifying Project and which Department should therefore assume the role of NEPA Lead Agency.

(b) DOI and USDA shall notify DOE of their determination regarding the NEPA Lead Agency in writing within thirty (30) calendar days of making the determination.

(c) Unless DOE notifies DOI and USDA in writing of its objection to that determination within ten (10) calendar days of the DOI/USDA notification, the determination shall be deemed accepted and final. In deciding whether to object to the determination, DOE shall consider the CEQ regulations pertaining to selection of the Lead Agency, including 40 CFR 1501.5(c).

(d) For proposed Qualifying Projects that do not cross lands administered by both DOI and USDA, DOE and the Federal Entities that will likely constitute the cooperating agencies for an environmental review document under NEPA, shall consult and jointly recommend a potential NEPA Lead Agency within 45 calendar days of receiving an IIP Process Close-Out Meeting Request. If DOE and the Federal Entities are unable to agree on a recommendation for a NEPA Lead Agency, the Federal Entities shall request CEQ to make a final determination by the Close-Out Meeting. No determination of a Federal Entity as the potential NEPA Lead Agency under this part shall be made absent that Federal Entity's consent.

#### **§ 900.6 IIP Process administrative file**

(a) When communicating with the Project Proponent during the IIP Process, Federal Entities are expected to include DOE in all communications related to the IIP Process for the Project Proponent's proposed Qualifying Project.

(b) DOE shall maintain all information, including documents and communications, it disseminates or receives from the Project Proponent, Federal Entities, and Non-Federal Entities during the IIP Process in an IIP Process Administrative File for future use in reviewing any applications for required Federal Authorizations for the proposed Qualifying Project. DOE will process any requests for information from the public in accordance with Freedom of Information Act requirements. DOE will share the IIP Process Administrative File with the selected or potential NEPA Lead Agency.

(c) DOE shall document the list of issues identified during the IIP Process for a proposed Qualifying Project and any updates to information provided as part of the Close-Out Meeting discussion in a Final IIP Resources Report for the IIP Process Administrative File.

(d) Each Federal Entity is strongly encouraged to maintain the documents and communications developed in the IIP Process subject to each Federal Entity's administrative record policies and, as appropriate and applicable, those documents and communications should become part of that Federal Entity's administrative record for granting or denying a Federal Authorization for each Qualifying Project.